

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: William W. Ackerman, CPA, Budget & Finance Director/797-1050

PREPARED BY: William W. Ackerman, CPA, Budget & Finance Director/797-1050

SUBJECT: Resolution

AFFECTED DISTRICT: Townwide

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: BOND ISSUANCE - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA MAKING CERTAIN FINDINGS; AUTHORIZING THE ISSUANCE OF THE TOWN OF DAVIE, FLORIDA, EDUCATIONAL FACILITIES REVENUE BONDS, SERIES 2008B (NOVA SOUTHEASTERN UNIVERSITY PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$60,000,000 TO PAY OR REIMBURSE THE COST OF THE EDUCATIONAL FACILITIES TO BE ACQUIRED, CONSTRUCTED AND EQUIPPED BY NOVA SOUTHEASTERN UNIVERSITY, INC., AND TO PAY CERTAIN COSTS OF ISSUANCE OF THE 2008B BONDS INCLUDING THE COSTS OF A CREDIT FACILITY; AUTHORIZING THE EXECUTION, DELIVERY AND/OR USE OF A BOND INDENTURE, BOND LOAN AGREEMENT, MASTER TRUST INDENTURE, MASTER BCEFA SUPPLEMENT, MASTER OBLIGATION, CREDIT FACILITY, REMARKETING AGREEMENT, BOND PURCHASE AGREEMENT, OFFICIAL STATEMENT AND OTHER DOCUMENTS AND THE PERFORMANCE OF OBLIGATIONS THEREUNDER; AUTHORIZING THE NEGOTIATED SALE OF THE 2008B BONDS TO SUNTRUST ROBINSON HUMPHREY, INC. AND BANC OF AMERICA SECURITIES LLC AND DELEGATING THE MAYOR AND TOWN ADMINISTRATOR TO FIX THE FINAL TERMS AND CONDITIONS OF THE 2008B BONDS AND DOCUMENTS SUBJECT TO CERTAIN PARAMETERS; APPOINTING U.S. BANK NATIONAL ASSOCIATION AS THE BOND TRUSTEE, PAYING AGENT AND REGISTRAR; REQUIRING INDEMNIFICATION; AUTHORIZING FURTHER ACTS ON BEHALF OF THE TOWN IN CONNECTION WITH THE 2008B BONDS; PROVIDING FOR SEVERABILITY; DECLARING FLORIDA LAW AS THE GOVERNING LAW IN CONNECTION WITH THE ISSUANCE OF THE 2008B BONDS; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The accompanying resolution is necessary for the Town to proceed with issuing the project bonds. This resolution establishes the maximum amount of the bonds, the terms of the loan agreement and the trust indenture, authorizes the official statement, authorizes the sale of the bonds with SunTrust Robinson Humphrey, Inc. and Banc of America Securities LLC, approves the underwriting agreement, and authorizes the appropriate Town officials to take all actions in connection with delivery of the bonds.

PREVIOUS ACTIONS: Town Council previously approved Resolution 2003-312 on December 2, 2003 for the United Jewish Community of Broward County, Inc., Resolution 2007-317 on November 7, 2007 for the Parkway Christian School and Resolution 2008-192 on August 20, 2008 for the Sheridan House. This item was tabled from the 9/17 Council meeting and has been moved to the October 1, 2008 meeting to give Council additional time to review the resolution.

CONCURRENCES: Town Administration, Town Attorney, Town Bond Counsel, and Nova Southeastern University.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

Additional Comments: Nova Southeastern University has agreed to pay all direct Town expenditures related to the issuance of the bonds.

RECOMMENDATION(S): Motion to approve resolution

Attachment(s):

Resolution
Master Trust Indenture
Master Supplement Note No. 1
Bond Indenture
Bond Loan Agreement
BCEFA Supplement
Bond Purchase Agreement
Official Statement
Remarketing Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA MAKING CERTAIN FINDINGS; AUTHORIZING THE ISSUANCE OF THE TOWN OF DAVIE, FLORIDA, EDUCATIONAL FACILITIES REVENUE BONDS, SERIES 2008B (NOVA SOUTHEASTERN UNIVERSITY PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$60,000,000 TO PAY OR REIMBURSE THE COST OF THE EDUCATIONAL FACILITIES TO BE ACQUIRED, CONSTRUCTED AND EQUIPPED BY NOVA SOUTHEASTERN UNIVERSITY, INC., AND TO PAY CERTAIN COSTS OF ISSUANCE OF THE 2008B BONDS INCLUDING THE COSTS OF A CREDIT FACILITY; AUTHORIZING THE EXECUTION, DELIVERY AND/OR USE OF A BOND INDENTURE, BOND LOAN AGREEMENT, MASTER TRUST INDENTURE, MASTER BCEFA SUPPLEMENT, MASTER OBLIGATION, CREDIT FACILITY, REMARKETING AGREEMENT, BOND PURCHASE AGREEMENT, OFFICIAL STATEMENT AND OTHER DOCUMENTS AND THE PERFORMANCE OF OBLIGATIONS THEREUNDER; AUTHORIZING THE NEGOTIATED SALE OF THE 2008B BONDS TO SUNTRUST ROBINSON HUMPHREY, INC. AND BANC OF AMERICA SECURITIES LLC AND DELEGATING THE MAYOR AND TOWN ADMINISTRATOR TO FIX THE FINAL TERMS AND CONDITIONS OF THE 2008B BONDS AND DOCUMENTS SUBJECT TO CERTAIN PARAMETERS; APPOINTING U.S. BANK NATIONAL ASSOCIATION AS THE BOND TRUSTEE, PAYING AGENT AND REGISTRAR; REQUIRING INDEMNIFICATION; AUTHORIZING FURTHER ACTS ON BEHALF OF THE TOWN IN CONNECTION WITH THE 2008B BONDS; PROVIDING FOR SEVERABILITY; DECLARING FLORIDA LAW AS THE GOVERNING LAW IN CONNECTION WITH THE ISSUANCE OF THE 2008B BONDS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the Town Council (the "Council") of the Town of Davie, Florida (the "Town"):

1. FINDINGS. The Council finds, determines and declares that:
 - (a) The Town is a municipal corporation duly organized and existing under the laws of the State of Florida and the Town is authorized pursuant to the Charter of the Town (the "Town Charter"), Florida Statutes, Chapter 166, Florida Statutes, Chapter 159, Part II, Chapter 243 and other applicable Florida laws (collectively, the "Act") to issue its revenue bonds, payable solely from revenues derived by the Town from financing agreements with respect to such projects, for the purpose of providing funds to pay all or any part of the costs

of “projects” as defined in the Act, including “educational facilities” as defined in the Act, and to issue revenue refunding bonds;

- (b) “Educational facilities” are defined Florida Statutes, Section 159.27(22) to include (1) property, limited to a structure suitable for use as a dormitory or other housing facility or a dining facility, that is operated in the public sector and used for or useful in connection with the operation of an institution for higher education as defined in Florida Statutes, Section 243.20(8), which offers the baccalaureate or a higher degree, and (2) property that comprises the buildings and equipment, structures, and special education use areas that are built, installed, or established to serve primarily the educational purposes of operating any nonprofit private preschool, kindergarten, elementary, school, middle school or high school that is owned or operated by an organization described in Section 501(c)(3) of the Internal Revenue Code;
- (c) Nova Southeastern University, Inc., a Florida not-for-profit corporation (the “University”), intends to construct, equip and renovate the following project (the “2008B Project”), situated and located on the main campus of the University at 3301 College Avenue, Davie, FL 33314:
 - (1) University School project, including construction and improvement of new lower school building of approximately 86,000 square feet and new auditorium/arts building of approximately 55,000 square feet;
- (d) The University is (1) an accredited, nonprofit educational institution empowered to provide a program of education beyond the high school level and therefore an "institution for higher education" as defined in the Act, and (2) an organization described in Section 501(c)(3) of the Internal Revenue Code that owns and operates the “University School,” a nonprofit private preschool, kindergarten, elementary, school, middle school and high school, within the meaning of the Act;
- (e) For purposes of Florida Statutes, Chapter 159, Part II , the Council finds and determines that (1) the 2008B Project is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of, the Town; shall provide or preserve gainful employment; shall protect the environment; or shall serve a public purpose by advancing the economic prosperity, the public health, or the general welfare of the state and its people as stated in Florida Statutes, Section 159.26; (2) the University is financially responsible and fully capable and willing to fulfill its obligations under the Bond Documents (hereinafter defined), including the obligations to make payments in the amounts and at the times required, to operate, repair, and maintain at its own expense the 2008B Project and to perform such other obligations as may be imposed under the Bond Documents, after giving consideration to the University’s ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the

industry or activity involved, its inherent stability, any Credit Facility (hereinafter defined) and other factors determinative of the capability of the party, financially and otherwise, to fulfill its obligations consistently with the purposes of Florida Statutes, Chapter 159, Part II; (3) the Town will be able to cope satisfactorily with the impact of the 2008B Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair, and maintenance of the 2008B Project and on account of any increases in population or other circumstances resulting therefrom; (4) adequate provision shall be made in the Bond Documents for the operation, repair, and maintenance of the 2008B Project at the expense of the University and for the payment of principal of and interest on the 2008B Bonds (defined herein); (5) the costs to be paid from the proceeds of the 2008B Bonds shall be costs of a project within the meaning of Florida Statutes, Chapter 159, Part II;

- (f) The University has requested the Town to issue its Educational Facilities Revenue Bonds, Series 2008B (Nova Southeastern University Project) (the “2008B Bonds”) in an aggregate principal amount not to exceed \$60,000,000, issued pursuant to a Bond Indenture (the “Bond Indenture”) between the Town and U.S. Bank National Association (the “Bond Trustee”), and the proceeds of the 2008B Bonds shall be loaned to the University pursuant to a Bond Loan Agreement (the “Bond Loan Agreement”) between the Town and the University to (a) pay, or reimburse to the Town or the University, 2008B Project costs; and (b) pay certain expenses incurred in connection with the issuance of the 2008B Bonds, including the costs of a Credit Facility;
- (g) The University and U.S. Bank National Association, (the “Master Trustee”) will enter into the Master Trust Indenture (the “Master Indenture”) and the Master Supplement for Note No. 1 (the “Master Supplement”) and the University will issue Note No. 1 thereunder to evidence its obligation arising from the issuance of the 2008B Bonds; and
- (h) The University has requested the Broward County Educational Facilities Authority (the “Authority”) to acknowledge and agree to the issuance by the University of its “Additional Parity Obligations,” (the “Master Obligation”), pursuant to the Second Amended and Restated Trust Indenture, dated as of April 1, 2004, as amended and supplemented (the “BCEFA Indenture”), between the Authority and U.S. Bank National Association, as successor to SunTrust Bank, as trustee (the “BCEFA Trustee”), and pursuant to the Master BCEFA Supplement (the “Master BCEFA Supplement”) between the Authority and the BCEFA Trustee and joined by the University, in a principal amount equal to the aggregate principal amount of the Notes issued and outstanding from time to time under the Master Trust Indenture, as a source and as security for the repayment of the University’s obligations under the

Bond Loan Agreement and, by assignment to the Bond Trustee under the Bond Indenture; and

- (i) Due to the character of the 2008B Bonds, timing, size and complexity of the transactions related to the 2008B Bonds, the present volatility of the municipal bond market and the uncertainty inherent in a competitive bidding process, it is in the Town's best interest to sell the 2008B Bonds by delegated, negotiated sale rather than by competitive bid at public sale.

2. TEFRA HEARING.

- (a) At this Board meeting and as discussion in the consideration of this Resolution, the Town has held and conducted a public hearing (the "TEFRA Hearing"), which notice of such hearing was published on September 3, 2008 in the Sun Sentinel, for the purpose of giving all interested persons an opportunity to express their views, either orally or in writing, concerning the 2008B Project and proposed issuance of the 2008B Bonds as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and, after hearing and reviewing the results of such hearing, the Town wishes to approve and authorize the issuance of the 2008B Bonds.
- (b) The 2008B Project and the issuance of the 2008B Bonds in an aggregate principal amount not to exceed \$60,000,000 is hereby in all respects approved by the Town for purposes of Section 147(f) of the Code.

3. AUTHORIZATION AND APPROVAL OF TEFRA HEARING AND 2008B BONDS; DESIGNATION.

- (a) The TEFRA Hearing and the results thereof with respect to the 2008B Project and the issuance of the 2008B Bonds are hereby in all respects approved by the Town for purposes of Section 147(f) of the Code.
- (b) The Town is hereby authorized to issue, execute and deliver to the Bond Trustee the 2008B Bonds in an aggregate principal amount not to exceed \$60,000,000 , the proceeds of which shall be loaned to the University to (a) pay or reimburse the cost of the 2008B Project to be acquired, constructed and equipped by the University; and (b) pay certain expenses incurred in connection with the issuance of the 2008B Bonds, including the costs of a Credit Facility; and
- (c) The 2008B Bonds shall be designated "THE TOWN OF DAVIE, FLORIDA, EDUCATIONAL FACILITIES REVENUE BONDS, SERIES 2008B (NOVA SOUTHEASTERN UNIVERSITY PROJECT)."
- (d) For the purposes of any limitation contained herein on the aggregate principal amount of Bonds, the principal amount thereof shall be the initial principal

amount on the date of issuance thereof. The 2008B Bonds shall be serial bonds or terms bonds dated on such date or dates, shall bear interest payable on each date therefor, at such fixed or variable rates (not exceeding the maximum rate permitted by law), shall be numbered and shall mature, subject to prior redemption (both optional and sinking fund redemptions), on such maturity dates (not to exceed fifty (50) years from their date of issue), and shall contain all other details, terms, forms and provisions as are set forth in the 2008B Bond Indenture Supplement.

- (e) The Mayor, any Member of the Council, the Town Administrator or the Town Clerk (as applicable, the "Authorized Representative") is authorized to execute and attest, on behalf of the Town, the 2008B Bonds in the forms and containing the terms described herein and to cause the 2008B Bonds to be authenticated as set forth in the Bond Indenture (hereinafter defined) and sold or issued as set forth in this Resolution, with such Authorized Representative's execution of the 2008B Bonds conclusive evidence of such person's approval of the forms and terms of the 2008B Bonds.
- (f) The 2008B Bonds and the premium, if any, and the interest thereon shall (a) not be deemed to constitute a debt, liability or obligation of any authority or county or of the State of Florida or of any political subdivision thereof, including, without limitation, the Town and the Authority, and (b) be payable solely from the revenues and receipts received by the Town pursuant to the Bond Loan Agreement and Note No. 1, in each case as specifically set forth in the Bond Indenture. Neither the faith and credit nor any taxing power of any authority or any county or of the State of Florida, or of any political subdivision thereof, including, without limitation, the Town and the Authority, is pledged to the payment of the principal of, or premium, if any, or interest on the 2008B Bonds.

4. MASTER TRUST INDENTURE, MASTER SUPPLEMENT FOR NOTE NO. 1, BOND INDENTURE, BOND LOAN AGREEMENT AND OTHER DOCUMENTS.

In connection with the issuance of the 2008B Bonds and the financing of the 2008B Project by the Town from the proceeds of the 2008B Bonds, the Council hereby authorizes and approves the execution and delivery and/or use, as the case may be, of the following instruments, each in substantially the form presented to the meeting of the Town at which this Resolution is adopted or, in the case of the Credit Facility noted below, in the form negotiated and approved as set forth herein, with such insertions, filling in of blanks, changes or deletions as are approved by an Authorized Representative, with the execution or the acceptance thereof by an Authorized Representative being conclusive evidence of the Town's approval of the final form of such documents with such insertions, filling in of blanks, changes or deletions (collectively, the "Bond Documents"):

- (a) The Master Indenture and the Master Supplement thereto in relation to the 2008B Bonds.
- (b) The Bond Indenture between the Town and the Bond Trustee (the “Bond Indenture”).
- (c) The Bond Loan Agreement between the Town and the University (the “Bond Loan Agreement”).
- (d) The Master Obligation and the Master BCEFA Supplement in relation thereto, including, without limitation, any assignments, depository control agreements or supplements or other instruments authorized thereby.
- (e) If the University determines to use Credit Facilities, bond insurance, letter of credit, surety bond or other credit facilities (the “Credit Facility”) in amounts and to the extent determined reasonable or necessary by an Authorized Representative, issued by an issuer acceptable to the Authorized Representative (the “Credit Provider”), in the form and amount to be negotiated and approved by the Authorized Representative, in relation to the 2008B Bonds.
- (f) The Remarketing Agreement (the “Remarketing Agreement”) between the University and SunTrust Bank, as the Remarketing Agent (the “Remarketing Agent”), in relation to the 2008B Bonds.
- (g) The Bond Purchase Agreement (the “Bond Purchase Agreement”) among the University, the Town and SunTrust Robinson Humphrey, Inc. and Banc of America Securities LLC, as underwriters (collectively, the “Underwriters”), in relation to the 2008B Bonds.
- (h) The Official Statement to be used in connection with the offering and sale of the 2008B Bonds and any Rule 15c2-12 Certificates in connection therewith.
- (i) Such other instruments, certificates, opinions and other matters as the Authorized Representative deems necessary or desirable in connection with these transactions.

In addition, the Town is authorized and directed to comply with, and satisfy each of the conditions to the issuance of the 2008B Bonds, including, without limitation, those conditions contained in the Master Trust Indenture, the Bond Indenture and the Bond Loan Agreement. The proceeds of the 2008B Bonds shall be applied as set forth in the Bond Indenture.

5. NEGOTIATED SALE OF THE 2008B BONDS; AWARD.

The negotiated sale of the 2008B Bonds to the Underwriters is hereby authorized pursuant to Section 218.385, Florida Statute. An Authorized Representative is hereby authorized to award the 2008B Bonds to the Underwriters, as set forth above, pursuant to the Bond Purchase Agreement, subject to the following conditions:

- (a) The Underwriter's discount on the 2008B Bonds shall not be more than (i) \$5.00 per \$1,000 (if the 2008B Bonds are not secured by a Credit Facility), and (ii) \$2.50 per \$1,000 (if the 2008B Bonds are secured by a Credit Facility), of, in either case, the principal amount of the 2008B Bonds issued, excluding Underwriter's counsel fees and Underwriter's counsel expenses which shall be finally determined by the University.
- (b) The final maturity date on any of the 2008B Bonds shall not be later than April 1, 2038.
- (c) The true interest cost, taking into account and including the cost of the Credit Facility, if any, on the 2008B Bonds shall not exceed 5.5% per annum.
- (d) All or a portion of the 2008B Bonds may be subject to mandatory redemption and or mandatory and/or optional purchase prior to maturity.
- (e) All of the 2008B Bonds must be subject to optional redemption by April 1, 2108 at prices no greater than 102% of par, plus accrued interest.
- (f) The Town shall have received a disclosure statement from the Underwriters, setting forth the information required by Section 218.385, Florida Statute, as amended, and the Underwriters shall have complied with Section 287.133, Florida Statute.
- (g) The sale and issuance of the 2008B Bonds shall take place on or before November 30, 2008.
- (h) Such other conditions as shall be deemed necessary by the Authorized Representative in consultation with Tripp Scott, P.A. ("Bond Counsel").

6. BOND TRUSTEE.

U.S. Bank National Association is hereby confirmed as the Bond Trustee, Paying Agent and Registrar under the Bond Indenture.

7. INDEMNIFICATION.

The Town requires, and it shall be included in the Bond Documents, that the University shall indemnify and save the Town and its respective members, officials, Authorized Representative, employees, agents and attorneys thereof harmless against and from all claims, including any attorneys fees and costs incurred in defense of such claims, by or on behalf of any person, firm, corporation or other legal entity arising from the conduct or management of, or from any work or thing done on, any portion of the 2008B Project or resulting from any breach of any representation, warranty, agreement or covenant of the University contained in any Bond Document or from the issuance or sale of any 2008B Bonds or Obligations and from any pecuniary liability by reason of the terms of any Bond Document or the undertakings required of the Town thereunder, by reason of the issuance of any 2008B Bonds or Obligations, by reason of the execution of the Bond Indenture or any Bond Document or by reason of the performance of any act requested of the Town by the University, including attorneys fees and costs incurred in defense thereof and including all claims, liabilities or losses, arising in connection with the violation of any statutes or regulation pertaining to the foregoing.

8. OTHER.

- (a) *Further Acts.* The Authorized Representative, employees, agents and persons otherwise acting on behalf of the Town are hereby authorized to do all acts and things required of them by this Resolution for the full, punctual and complete performance of all the terms, covenants and agreements contained in the 2008B Bonds and this Resolution. The Authorized Representative is hereby authorized and directed to execute and deliver the 2008B Bonds and the Bond Documents to which the Town is a party, and to do and perform such other acts on behalf of Town, as may be necessary or desirable and appropriate to carry out the provisions and complete the transactions contemplated by this Resolution and the Bond Documents.
- (b) *Severability.* In case any one or more of the provisions of this Resolution, of any Bond Document or of any 2008B Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Resolution, such Bond Document or such 2008B Bond, as the case may be, and they shall be construed and enforced as if such illegal or invalid provision had not been contained therein.
- (c) *Florida Law.* The 2008B Bonds will be issued, this Resolution is adopted, and the Bond Documents shall be negotiated and drafted with the intent that the laws of the State of Florida shall govern their construction, except as otherwise expressly noted therein.

(d) *Definitions.* Capitalized terms used but not defined herein have the meanings assigned to such terms in the Bond Indenture or the Master Trust Indenture, unless the context in which such terms are used require a different meaning.

(e) *Effective Date.* This Resolution shall take effect immediately upon its adoption. This Resolution may be signed in one or more counterparts, each of which shall be originals of this Resolution, but all such counterparts shall form but one and the same Resolution.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008

BER

MAYOR/COUNCILMEM

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008

DUE TO THE SIZE
OF THE ATTACHMENTS,
THE DOCUMENTS CAN BE REVIEWED
IN THE TOWN CLERK'S OFFICE